IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 101 of 1989

MOHAN LAL SUKHADIA UNIVERSITY,UDAIPUR
V/S
DR. NARENDRA SINGH

Mr. JAGDISH VYAS for Mr. VD VYAS, for the appellant

Mr. AMIT DAVE for Mr. PP CHOUDHARY, for the respondent

Date of Order : 16.11.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

Heard learned counsel for the parties.

This appeal has been filed by the defendant against the judgment & decree of the learned lower Appellate Court, decreeing the plaintiff's suit for compensation, to the tune of Rs. 4000/-.

The facts of the case are, that the plaintiff filed a suit on 22.11.1984, praying for injunction against the defendant, to get the vehicle transferred in his name with the Transport Authorities, and to obtain token so as to enable the plaintiff to ply it. The plaintiff also claimed compensation to the extent of Rs. 4875/-, and continuing compensation of Rs. 25/- per day. The allegations of the plaintiff are, that the defendant auctioned Jeep No. RJY 2790, and in that auction the

plaintiff purchased it, and after making payment of its price, possession of the jeep was delivered to him on 12.5.1984, but then the token, Registration Certificate, and Insurance etc. were not given. Then, when the plaintiff approached the defendant to get the vehicle transferred in his name, the defendant simply wrote a letter to the Regional Transport Officer, but then the Regional Transport Officer declined to effect transfer. According to the plaintiff at the time of auction the plaintiff was assured that the above documents will be given to the plaintiff within 21 days, but they have not been given. It is also alleged, that on enquiries being made, it transpired, that the registration certificate etc. were never surrendered, and tax has also not been paid, and therefore, token cannot be issued, nor vehicle can be transferred. It is alleged that the plaintiff cannot use the vehicle on road without token and documents. It was also pleaded that the plaintiff purchased the jeep for being used in his profession of Medical Doctor, as he has to travel to nearby villages also, and on account of not being able to use the jeep, he is suffering loss of at least Rs. 25/- per day. Interalia with these averments, the above reliefs were claimed.

The defendant filed the written statement, and the whole plank of the defence is, that the vehicle was not sold, rather scrap was sold on “as is where is” basis, and therefore, there was no responsibility of the defendant to

deliver to the plaintiff Registration Certificate, or Insurance cover or token etc. According to the defendant since the vehicle was sold as scrap, the defendant was under no obligation to have the vehicle transferred in the name of the plaintiff, and simply because by courtesy the defendant wrote a letter, and the Transport Office declined to effect entry of transfer, the defendant cannot be held liable. It was maintained, that at the time of auction, no assurance, as alleged by the plaintiff, was ever given. According to the defendant Registration Certificate etc. were surrendered before the Regional Transport Office on 31.3.1979, and since they were not available, a letter was written to issue duplicate. It was admitted that the vehicle belongs to the defendant no.1, and is registered in the name of defendant no.2 in the Registration Certificate. Interalia with these averments, it was prayed that the suit be dismissed.

Learned trial court framed as many as five issues. First issue was, as to whether the defendant has sold the jeep as a scrap, therefore, it was under no obligation to deliver Registration Certificate etc. Then issue no. 2 was as to whether any assurance was given at the time of auction, that Registration Certificate, token, insurance cover etc. shall be made available to the plaintiff within 21 days. Then, issue no. 3 related to liability of tax, and issue no. 4 was about quantum of compensation. The learned

trial court, while deciding issue no.1 concluded, that the vehicle was sold as scrap, and there was no responsibility of the defendant to hand over any other papers. Likewise issue no. 2 was also decided, by holding, that the plaintiff has failed to prove any such assurance having been given, and for arriving at this conclusion it had considered, that the defendant no.3 has not been summoned in the witness box, and the plaintiff himself has not deposed in his statement, that any such assurance was given. In the result, the suit was dismissed.

In appeal, the learned lower Appellate Court has re-appreciated the evidence, finding the conclusions of the learned trial court to be wrong, and considering even documents Ex.A-1 and A-2, it has been found, that the jeep was not sold as a scrap but was sold as jeep, which was "out of use" vehicle, and by condition no. 10 of the auction notice Ex.A-1, it is clear that the defendant had undertaken to make available the Registration Certificate etc. and in that sequence reliance was also placed on Ex.-1. Then, evidence of the defence has also been considered, and it has been found, that the learned trial court was in error in recording the findings as recorded, and that the defendant was under obligation to make available the Registration Certificate etc. Then, assessing compensation, the learned lower Appellate Court assessed a lump sum amount of Rs. 4,000/-, to be payable as compensation.

The appeal was admitted vide order dt. 12.12.1989 by framing following substantial question of law:-

> "Whether under the facts and circumstances of the case, the first appellate Court was justified in granting Rs. 4,000/- as compensation to the plaintiff-respondent?"

Arguing the appeal, the whole stress of the learned counsel for the appellant was, that the vehicle was sold as a scrap, and it was not the responsibility of the defendant to make available Registration Certificate, Insurance cover, token etc. It was also submitted, that in any case it was not shown, that the defendant was in fault in not making available the documents, as the documents were surrendered with the Regional Transport Officer, and admittedly the vehicle has been transferred in the name of the plaintiff, after the tax was deposited, as admitted by the plaintiff, and in that view of the matter no decree for compensation could be passed. It was the plaintiff himself who deposited the tax, and after getting the token, by depositing the tax upto March, 1986 from March, 1984, he got the jeep repaired. According to the learned counsel, thus it appears, that the token did not become available to the plaintiff because he did not deposit the tax, and no fault can be found with the appellant.

On the other hand, learned counsel for the

respondent, supported the findings of the learned lower Appellate Court.

I have considered the submissions, and have gone through the record. In my view from a bare reading of Ex. A-1 and Ex.A-2, it is more than clear, that the vehicle was not sold as a scrap, but was sold as a jeep, which according to the defendant was out of use for quite some time, and in Ex.A-1 it was clearly stipulated, that the Registration Certificate would be made available after receipt of the full price of the vehicles, where such certificates have been surrendered. This in my view, has rightly been found to be applicable on the part of the appellant, to make available the Registration Certificate etc. Then, the learned trial court has misread the evidence of the plaintiff, inasmuch as the plaintiff has very categorically deposed, that at the time of purchase of the jeep he was assured to be delivered the documents, and significantly, on this part of his evidence, there is no cross-examination whatever, on the side of the defendant. Then, even D.W.1 in his entire evidence, he has no-where stated, that the defendants were not under any obligation to make available the papers, rather he has deposed, that after obtaining duplicate papers from the Regional Transport Office, they were made available. In that view of the matter, it is obvious, that the plaintiff has clearly established, that he was assured that the papers would be

made available, apart from the fact, that such obligation is clearly apparent in Condition no. 10 of Ex. A-1.

It is not in dispute, that the purchaser could not use the vehicle on road, obviously without Registration Certificate, and token etc. That being the position I do not find any error in the findings of the learned lower Appellate Court, holding the defendant liable, on account of defendants having not given the Registration Certificate etc. to the plaintiff.

So far as the quantum of compensation, as awarded, is concerned, no submissions were made on the side of the appellant, therefore, that need not detain me.

The net result is that I do not find any force in the appeal. The same is, therefore, dismissed. The parties are left to bear their own costs.

(N P GUPTA),J.

/Sushil/